

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

LABELLE MALONE, )  
                        )  
Plaintiff,         )  
v.                    )         No. 1:07-cv-101-SEB-DML  
                        )  
CORA BALL,         )  
                        )  
Defendant.         )

**Entry Discussing Defendant's Renewed Motion  
for Summary Judgment as to Affirmative Defense of  
Failure to Exhaust Available Administrative Remedies**

The defendant's pending motion for summary judgment renews her claim that the action is subject to dismissal based on the plaintiff's failure to exhaust available administrative remedies prior to filing the action. This is a requirement of a portion of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). This particular argument, however, was previously rejected at the summary judgment stage and thereafter also rejected following proceedings pursuant to *Pavey v. Conley*, 528 F.3d 494 (7th Cir. 2008).

The defendant offers no factual or legal basis on which to revisit the question of exhaustion. Renewal of the argument in the present motion for summary judgment is not required to preserve the question for possible later resolution at trial or on appeal. **That portion** of the defendant's motion for summary judgment (dkt 102) is therefore **denied**.

**IT IS SO ORDERED.**

Date: 09/03/2010

Sarah Evans Barker  
SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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